

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

EDWARD M. HAMPTON,)	
)	
Petitioner,)	
)	
v.)	No. 2:20-cv-00498-JPH-MJD
)	
WARDEN,)	
)	
Respondent.)	

**Order Directing Petitioner to Notify Court and
Denying Motion for Leave to Proceed *In Forma Pauperis***

On September 21, 2020, Edward Hampton filed a petition for writ of habeas corpus challenging his conviction and sentence in Indiana case number D05-1903-F3-10.

Mr. Hampton states that he has a pending petition for post-conviction relief in state court under cause number 02D05-1907-PC-48. Mr. Hampton states, "The pending PCR has one issue not presented to the State Court therefore it cannot be added to this petition *at this time*." Dkt. 1 at 2 (emphasis added).

"To protect the primary role of state courts in remedying alleged constitutional errors in state criminal proceedings, federal courts will not review a habeas petition unless the prisoner has fairly presented his claims throughout at least one complete round of state-court review, whether on direct appeal of his conviction or in post-conviction proceedings." *Johnson v. Foster*, 786 F.3d 501, 504 (7th Cir. 2015) (citation and quotation marks omitted); *see* 28 U.S.C. § 2254(b)(1)(A). Further, once a petitioner has received a decision on the merits in a federal habeas case, he must obtain leave from the appropriate United States Court of Appeals before he may file a second or successive petition. 28 U.S.C. § 2244(b)(3); *see also Freeman v. Chandler*, 645 F.3d 863, 867 (7th Cir. 2011).


If Mr. Hampton continues to litigate his petition, he may miss his opportunity to raise the claim in his state post-conviction petition. *See, e.g. Tucker v. Kingston*, 538 F.3d 732, 734 (7th Cir. 2008) (noting that where habeas petition had been dismissed, there was no remaining petition to amend).

Accordingly, Mr. Hampton shall have **through October 15, 2020**, to notify the Court whether he wishes to withdraw his petition without prejudice so he may exhaust his state remedies. If Mr. Hampton does not respond, the Court will proceed with his petition as submitted.

Further, Mr. Hampton's motion for leave to proceed *in forma pauperis*, dkt. [2], is **denied** because Mr. Hampton has sufficient funds to pay the \$5.00 filing fee. Mr. Hampton shall have **through October 15, 2020**, to pay the filing fee.

SO ORDERED.

Date: 9/25/2020


James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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